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No. 237.

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# In the Supreme Court of the United States

OCTOBER TERM, 1929.

STATE OF OHIO, EX REL.
E. H. BRYANT,
*Appellant,*

VS.

AKRON METROPOLITAN PARK DISTRICT FOR
SUMMIT COUNTY,
F. A. SEIBERLING,
EDWARD D. ECKROAD,
MAUDE I. MILAR, and
JACOB MONG, COUNTY AUDITOR,
*Appellees.*

## APPELLANT'S STATEMENT OF BASIS OF JURISDICTION OF THIS COURT.

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JACOB MONG, COUNTY AUDITOR,
*Appellees.*

## APPELLANT'S STATEMENT OF BASIS OF JURISDICTION OF THIS COURT.

(a) **Statutory Provisions Sustaining the Jurisdiction.**—U. S. Code, Title 28, §237, concerning writs of error from state courts of last resort, as modified by §861 a (Act of January 31, 1928, Chap. 14, 45 Stats. 54) substituting appeals for writs of error, and §861 b (Act of April 26, 1928, Chap. 440, 45 Stats. 466) making applicable to such appeals the statutes regulating the right to a writ of error and the practice in relation thereto, afford the statutory basis of the jurisdiction here invoked.

(b) **Dates of Judgment Sought to be Reviewed and of Application for Appeal, with References to Record.**—The date of the affirmance by the Supreme Court of Ohio of the judgment of the Court of Appeals affirming that ren-

dered by the Court of Common Pleas of Summit County, Ohio, herein, is March 27, 1929 (Record not yet printed, p. 18); and the date of the overruling by the Supreme Court of Ohio of appellant's motion to vacate said judgment of affirmance and to substitute therefor an entry of judgment for plaintiff in error, appellant here, is June 5, 1929 (R. 18); both of which judgments are sought to be reviewed here. The date on which application for the appeal was presented and allowed is June 13, 1929 (R. 18).

(c) **Showing that the Nature of the Case and of the Rulings Below are within said Jurisdictional Provisions, with References to Record.**—The suit below challenged the validity of the Park District Acts (General Code of Ohio, Secs. 2976-1 to 2976-10i, inclusive) passed by the General Assembly March 6, 1917 (107 Ohio Laws 65), and April 9, 1919 (108 id., Part 2, 1097), upon the ground, among others, that they denied to the taxpayers of said district, including the relator, the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution (R. 34) and were otherwise unconstitutional (R. 34), in that said acts purport to delegate to the Probate Judge of any county in Ohio the power of creating and enlarging such park district within and beyond his county and of appointing commissioners of such district (R. 31, 33), and further delegate to such non-elective commissioners discretionary power to levy taxes (R. 32, 33, 34), to appoint a constabulary and to enact penal measures effective within and adjacent to such districts (R. 33), and also subject the taxpayers within the district to the financial burden of acquiring and maintaining lands outside of it (R. 32).

The case was first tried in the Court of Common Pleas and judgment on the pleadings rendered for defendants. On error, in the Court of Appeals, said judgment was affirmed, and on error in the Supreme Court of Ohio a judg-

ment of affirmance was again entered, the journal entry, however, reciting (R. 19) that

> "it appearing that five members of this Court (Robinson, Jones, Matthias, Day and Allen, *JJ.*) are of the opinion that Sections 2976-4, 2976-5, 2976-10, 2976-10c, 2976-10e, 2976-10i of the General Code of Ohio are unconstitutional; that two members (Marshall, *C. J.* and Kinkade, *J.*) are of the opinion that said sections are not repugnant to any constitutional provision; that the Court of Appeals held the said statutes constitutional and that in such cases the Constitution of Ohio requires a concurrence of all but one of the members of the Supreme Court to declare a law unconstitutional, it is ordered and adjudged that the judgment of the said Court of Appeals be and the same hereby is affirmed."

Thereupon the appellant, as plaintiff in error in said Supreme Court of Ohio, filed there an application for a rehearing and motion (which said court overruled) to vacate said judgment of affirmance and for judgment for plaintiff in error, etc., upon the grounds, among others, of repugnancy of the said provision in Section 2 of Article IV of the Constitution of Ohio, in its practical operation and effect as illustrated in this case (and elaborated in that of *Board of Education of Columbus v. Columbus,* 118 Ohio State 295, at pages 296, 298 and 306, showing how, by the same vote of the same judges at the same time in different cases involving the validity of the same statute, such statute is arbitrarily and capriciously made valid in some parts and invalid in other parts of the state), to and in conflict with the Constitution of the United States, including the equal protection and due process clauses of Section 1 of the Fourteenth Amendment and the provisions relating to immunities and privileges and republican form of government in Sections 2 and 4 of Article IV, as follows (R. 72):

> "(1) The provision above set forth and contained in Section 2 of Article 4 of the Constitution of Ohio is

inconsistent and in direct and irreconcilable conflict with that portion of the same section, i. e., Section 2 of Article 4 of the Constitution of Ohio, which provides:

> "'It (the Supreme Court) shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving questions arising under the Constitution of the United States or of this state * * *;'

"that the language last quoted is paramount and controlling over the language first quoted herein, rendering the provision first quoted invalid and unenforceable.

"(2) The portion of Section 2 of Article IV, providing as follows:

> "'No law shall be held unconstitutional and void by the Supreme Court without concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void'—

"is invalid and in conflict with the Constitution of the United States and the following language used therein in Article I, Section 14, known as the Fourteenth Amendment, as follows:

> "'Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws';

"the provision in the Ohio Constitution contained, just herein before set forth, does deny to citizens of Ohio due process of law, and does likewise deny to them the equal protection of the laws.

"(3) The provision in the Constitution of Ohio contained, just hereinbefore set forth, is void and invalid as being repugnant to the letter and spirit of the Constitution of the State of Ohio and likewise the Constitution of the United States in so far as they require and provide for each State having a republican

form of government wherein the will of the majority shall prevail."

See "Statement of Points to be Relied on by Appellant," heretofore filed herein.

(d) **Citation of Cases Sustaining the Jurisdiction.**

*Mallett v. North Carolina,* 181 U. S. 589;
*Truax v. Corrigan,* 257 U. S. 312;
*Bowman (Missouri) v. Lewis,* 101 U. S. 22;
*Gunn v. Berry,* 15 Wallace 610;
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